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S. RAVI A/L G. SUPPIAH

v.

TIMBALAN MENTERI HAL EHWAL DALAM NEGERI, MALAYSIA & ANOR.

b

HIGH COURT MALAYA, MUAR
TUAN LOW HOP BING JC
[CRIMINAL APPLICATION NO. 44-23-1994]
7 NOVEMBER 1994

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PRACTICE & PROCEDURE: Order 41 r. 3 RHC - Affidavit of deponent affirmed in Bahasa Malaysia and signed in Tamil - No indication in affidavit whether deponent was literate in Bahasa Malaysia - No certificate under O. 41 r. 3 - Whether requirements of O. 41 r. 3 mandatory - Whether the affidavit can be used in evidence without the certificate.

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This was an application for a writ of *habeas corpus* which was supported by affidavits and exhibits. It came to the attention of the Court that the affidavit of the deponent was affirmed in Bahasa Malaysia and signed in Tamil. However, there was no indication in the deponent's affidavit that the deponent was literate in Bahasa Malaysia and there was non-compliance with the requirements of O. 41 r. 3 of the Rules of the High Court 1980 (RHC)

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The Counsel for the applicant submitted that the Court could use the affidavit if leave was granted while the respondents submitted that the Court had the discretion as to whether to use the affidavit.

The issue was whether the affidavit could be used in evidence without the certificate under O. 41 r. 3 of the RHC.

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Held:

[1] Upon a proper construction of O. 41 r. 3, the requirements of O. 41 r. 3 are clearly and obviously mandatory in nature. In order to use an affidavit under O. 41 r. 3, it is absolutely essential that the conditions prescribed therein have been meticulously complied with, as the person administering the oath must certify that the three conditions of r. 3 have been complied with, failing which the affidavit shall not be used in evidence.

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[2] There is nothing in the affidavit to indicate that the contents of the affidavit appeared to be perfectly understood by the deponent. In the circumstances, the affidavit is defective and shall not be used in evidence and as there is no evidence to support this application, the application is dismissed.

[Application dismissed].

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Cases referred to:

Voon Mow Chen v. Menteri Dalam Negeri & Anor. [1993] 2 AMR 38 p. 2205 (foll)
Ratnam v. Cumaraswamy & Anor. [1965] 31 MLJ 228 (foll)
Syarikat Telekom Malaysia Bhd. v. Business Chinese Directory Sdn. Bhd. [1993] 2 AMR 37 (refd)

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Legislation referred to:

Rules of the High Court 1980, O. 41 r. 3

Other sources referred to:

Shorter Oxford English Dictionary

For the applicant - V. Shanmugam; M/s. Shanmugam & Co.

For the respondents - Mahmud bin Hj. Abdullah, FC

JUDGMENT

Low Hop Bing JC:

After the submissions by learned Counsel for the applicant and the learned Senior Federal Counsel for the respondents, I have adjourned this matter in order to prepare my reserved judgment. In the course of perusing all the affidavits and exhibits in support of and in opposition to this application, I noticed that the affidavit of the deponent was affirmed in Bahasa Malaysia and the deponent signed in Tamil. There was no indication whatsoever in the deponent's affidavit that the deponent is literate in Bahasa Malaysia. There was no evidence in this affidavit.

Order 14, r. 3 of the Rules of the High Court 1980 provides as follows:

Where it appears to the person administering the oath that the deponent is illiterate ..., he must certify that -

- (a) the affidavit was read in his presence to the deponent;
- (b) the deponent seemed perfectly to understand it; and
- (c) the deponent made his signature or mark in his presence;

and the affidavit **shall not be used** in evidence without such a certificate unless the Court is satisfied that it was read to and appeared to be **perfectly** understood by the deponent. (Emphasis is mine).

The deponent's affidavit has not complied with the strict mandatory requirements of O. 41, r. 3 and the issue before this Court is whether the affidavit can be used in evidence without the certificate under this rule.

Learned Counsel for the applicant submitted that the Court can use this affidavit if leave is granted, while the respondents submitted that it is the discretion of the Court whether or not to use this affidavit.

Upon a proper construction of O. 41, r. 3, I have no hesitation in holding that the requirements of O. 41, r. 3 are clearly and obviously mandatory in nature. In order to use an affidavit under O. 41, r. 3, it is absolutely essential that the conditions prescribed therein have been meticulously complied with, as the person administering the oath (in Malaysia, usually a commissioner for oaths, a Magistrate or a Sessions Court Judge) must certify that the aforesaid three conditions have been complied with, failing which the affidavit **shall not be used in evidence**.

The pre-requisite for such a mandatory requirement of O. 41, r. 3 is "where it appears to the person administering the oath that the deponent is illiterate or blind". In the rules, the word "illiterate" is not defined or explained. It is therefore necessary to refer to the natural, ordinary and popular meaning of this word as found in the dictionary. I have referred to the *Shorter Oxford English Dictionary* where the word "illiterate" means one who is unable to read. In the context of the affidavit in Bahasa Malaysia as affirmed by the deponent, it must mean that the deponent is unable to read Bahasa Malaysia. In the circumstances, *prima facie* the affidavit of the deponent shall not be used in evidence unless there is evidence to the effect that the deponent is literate in Bahasa Malaysia or unless a certificate in accordance with O. 41, r. 3 has been affixed on the affidavit itself.

a In order to use it as evidence, the Court has to be satisfied that the affidavit was read to and explained to and appeared **to be perfectly understood by the deponent**. There is nothing in the affidavit to indicate that the affidavit appeared to be perfectly understood by the deponent.

b In the circumstances, I find that the deponent's affidavit is defective and under O. 41, r. 3, it shall not be used in evidence. In *Voon Mow Chen v. Menteri Dalam Negeri & Anor* [1993] 2 AMR 35 p. 2205, Vincent Ng Kim Khoay, JC (as he then was) held, *inter alia*, that:

defective affidavits should not be used in *habeas corpus* applications, as affidavit evidence are the sole evidence to enable the Court to arrive at a just decision in such applications. If there is a flaw in the affidavit, same cannot be admitted in evidence without leave of the Court. A petition for *habeas corpus* is a writ petition, of a quasi criminal nature, thus attracting a higher standard of proof and requirement. As such the admissibility, due to invalidity, of a vital affidavit would be fatal.

c In *Ratnam v. Cumaraswamy & Anor* [1965] 31 MLJ 228, the Privy Council held that Rules of Court must *prima facie* be obeyed. It must be, I add, meticulously and faithfully complied with. As Mohd. Eusoff Bin Chin (now Chief Justice of the Federal Court) aptly said in *Syarikat Telekom Malaysia Bhd. v. Business Chinese Directory Sdn. Bhd.* [1993] 2 AMR 37:2154 "Failure to comply with them will lead to chaos in the conduct of litigation".

d In view of the fact that the deponent's affidavit cannot be used in evidence, I hold that there is no evidence to support this application. On this ground alone, I dismiss this application.

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